

# House Study Bill 639 - Introduced

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY BILL BY  
CHAIRPERSON ANDERSON)

## A BILL FOR

1 An Act relating to the apportionment of magistrates, and  
2 creating a full-time magistrate office.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 46.16, Code 2011, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 4. Subject to removal for cause, the  
4 initial term of office of a full-time magistrate shall be for  
5 one year after appointment and until January 1 following the  
6 next judicial election after expiration of such year, and the  
7 regular term of office of a magistrate retained at a judicial  
8 election shall be six years from the expiration of the initial  
9 or previous regular term, as the case may be.

10 Sec. 2. Section 46.20, Code 2011, is amended to read as  
11 follows:

12 **46.20 Declaration of candidacy.**

13 1. At least one hundred four days before the judicial  
14 election preceding expiration of the initial or regular term  
15 of office, a judge of the supreme court, court of appeals, or  
16 district court including a district associate judges judge,  
17 full-time associate juvenile judges judge, or full-time  
18 associate probate judges judge, a full-time magistrate, or  
19 a clerk of the district court who is required to stand for  
20 retention under section 602.1216 may file a declaration of  
21 candidacy with the state commissioner of elections to stand  
22 for retention or rejection at that election. If a judge,  
23 magistrate, or clerk fails to file the declaration, the office  
24 shall be vacant at the end of the term. District associate  
25 judges, full-time associate juvenile judges, and full-time  
26 associate probate judges, and full-time magistrates filing the  
27 declaration shall stand for retention in the judicial election  
28 district of their residence except as provided in subsection 2.

29 2. a. If a full-time magistrate is a resident of a county  
30 contiguous to the county of appointment and the counties are  
31 located in different judicial election districts, the full-time  
32 magistrate shall stand for retention in the judicial election  
33 district in which the county of appointment is located.

34 b. If a full-time magistrate is appointed to serve in more  
35 than one county and the counties are located in different

1 judicial election districts, the full-time magistrate shall  
2 stand for retention simultaneously in each of the judicial  
3 election districts. For purposes of determining if a full-time  
4 magistrate is retained pursuant to section 46.24, the votes  
5 of the judicial election districts shall be combined and the  
6 full-time magistrate must receive more affirmative votes than  
7 negative votes from the combined vote totals.

8     Sec. 3. Section 46.21, Code 2011, is amended to read as  
9 follows:

10     **46.21 Conduct of elections.**

11     At least sixty-nine days before each judicial election, the  
12 state commissioner of elections shall certify to the county  
13 commissioner of elections of each county a list of the judges  
14 of the supreme court, court of appeals, and district court  
15 including district associate judges, full-time associate  
16 juvenile judges, and full-time associate probate judges,  
17 full-time magistrates, and clerks of the district court to  
18 be voted on in each county at that election. The county  
19 commissioner of elections shall place the names upon the ballot  
20 in the order in which they appear in the certificate. The  
21 state commissioner of elections shall rotate the names in the  
22 certificate by county. The names of all judges, full-time  
23 magistrates, and clerks to be voted on shall be placed upon one  
24 ballot, which shall be in substantially the following form:

25                     STATE OF IOWA

26                     JUDICIAL BALLOT

27                     (Date)

28 VOTE ON ALL NAMES BY PLACING AN X IN THE APPROPRIATE BOX AFTER EACH NAME.

29                     SUPREME COURT

30 Shall the following judges of the Supreme Court be retained in  
31 office?

32             CANDIDATE'S NAME             YES   ☐             NO   ☐

33             CANDIDATE'S NAME             YES   ☐             NO   ☐

34                     COURT OF APPEALS

35 Shall the following judges of the Court of Appeals be retained

1 in office?

2 CANDIDATE'S NAME YES ☐ NO ☐

3 CANDIDATE'S NAME YES ☐ NO ☐

4 DISTRICT COURT

5 Shall the following judge, associate judge, associate juvenile  
6 judge, or associate probate judge of the District Court be  
7 retained in office?

8 CANDIDATE'S NAME YES ☐ NO ☐

9 Shall the following full-time magistrate be retained in office?

10 CANDIDATE'S NAME YES ☐ NO ☐

11 Shall the following clerk of the District Court be retained in  
12 office?

13 CANDIDATE'S NAME YES ☐ NO ☐

14 Sec. 4. Section 46.24, Code 2011, is amended to read as  
15 follows:

16 **46.24 Results of election.**

17 1. A judge of the supreme court, court of appeals, or  
18 district court including a district associate judge, full-time  
19 associate juvenile judge, or full-time associate probate judge,  
20 a full-time magistrate, or a clerk of the district court must  
21 receive more affirmative than negative votes to be retained in  
22 office. When the poll is closed, the election judges shall  
23 publicly canvass the vote forthwith. The board of supervisors  
24 shall canvass the returns on the Monday or Tuesday after the  
25 election, and shall promptly certify the number of affirmative  
26 and negative votes on each judge, magistrate, or clerk to the  
27 state commissioner of elections.

28 2. The state board of canvassers shall, at the time of  
29 canvassing the vote cast at a general election, open and  
30 canvass all of the returns for the judicial election. ~~Each~~  
31 A judge of the supreme court, court of appeals, or district  
32 court including a district associate judge, full-time associate  
33 juvenile judge, or full-time associate probate judge, a  
34 full-time magistrate, or a clerk of the district court who has  
35 received more affirmative than negative votes shall receive

1 from the state board of canvassers an appropriate certificate  
2 so stating.

3 Sec. 5. Section 602.6105, subsection 3, paragraph a, Code  
4 2011, is amended to read as follows:

5 a. The chief judge of a judicial district shall designate  
6 times and places for magistrates to hold court to ensure  
7 accessibility of magistrates at all times throughout the  
8 district, including the availability of a magistrate in each  
9 county on a regular basis. The schedule of times and places of  
10 availability of magistrates and any schedule changes shall be  
11 disseminated by the chief judge to the peace officers within  
12 the district.

13 Sec. 6. Section 602.6401, subsection 3, Code 2011, is  
14 amended by striking the subsection.

15 Sec. 7. Section 602.6403, subsection 1, Code 2011, is  
16 amended to read as follows:

17 1. By June 1 of each year in which magistrates' terms  
18 expire, the county magistrate appointing commission shall  
19 appoint, except as otherwise provided in section 602.6302 and  
20 602.6406, the number of magistrates apportioned to the county  
21 by the state court administrator under section 602.6401, the  
22 number of magistrates required pursuant to substitution orders  
23 in effect under section 602.6303, and may appoint an additional  
24 magistrate when allowed by section 602.6402. The commission  
25 shall not appoint more magistrates than are authorized for the  
26 county by this article.

27 Sec. 8. Section 602.6403, subsection 3, Code 2011, is  
28 amended to read as follows:

29 3. Within thirty days following receipt of notification of  
30 a vacancy in the office of magistrate, the commission shall  
31 appoint a person to the office to serve the remainder of the  
32 unexpired term, except as provided in section 602.6406. For  
33 purposes of this section, vacancy means a death, resignation,  
34 retirement, or removal of a magistrate, or an increase in the  
35 number of positions authorized.

1     Sec. 9. NEW SECTION.   602.6406   Appointment of full-time  
2 magistrate.

3     1. The chief judge, upon approval of the supreme court,  
4 may designate by order of substitution that a full-time  
5 magistrate be appointed pursuant to this section in lieu of the  
6 appointment of three magistrates appointed pursuant to section  
7 602.6403 subject to the limitations of this section.

8     2. A full-time magistrate shall be subject to the same  
9 appointment process, qualifications, and shall have the same  
10 jurisdictional limits of a magistrate appointed pursuant  
11 to sections 602.6403 through 602.6405, except as otherwise  
12 provided in this section.

13    3. A full-time magistrate shall serve an initial term and  
14 stand for retention in office as provided under sections 46.16  
15 through 46.24.

16    4. A person does not qualify for appointment to the office  
17 of full-time magistrate unless the person is at the time of  
18 appointment a resident of the county in which the vacancy  
19 exists or of a contiguous county, licensed to practice law in  
20 Iowa, and will be able, measured by the person's age at the  
21 time of appointment, to complete the initial term of office  
22 prior to reaching age seventy-two. An applicant for full-time  
23 magistrate shall file a certified application form, to be  
24 provided by the supreme court, with the chairperson of the  
25 county magistrate appointing commission.

26    5. A full-time magistrate shall be a resident of a county in  
27 which the office is held or of a contiguous county during the  
28 entire term of office.

29    6. A full-time magistrate shall qualify for office as  
30 provided in chapter 63 for district judges.

31    7. In the case of a full-time magistrate to be appointed  
32 to serve in more than one county, the appointment shall be  
33 from persons nominated by the county magistrate appointing  
34 commissions acting jointly.

35    8. The appointment of a full-time magistrate shall be

1 subject to the following limitations:

2     *a.* The county of appointment must have three or more  
3 magistrates apportioned to the county pursuant to section  
4 602.6401. If the appointment is for service in more than one  
5 county, the counties, in the aggregate, must have three or more  
6 magistrates apportioned to the counties pursuant to section  
7 602.6401.

8     *b.* A majority of district judges in the judicial election  
9 district must vote in favor of the substitution and find that  
10 the substitution will provide a more timely and efficient  
11 performance of judicial business within the judicial election  
12 district. In the case of a full-time magistrate to be  
13 substituted for three magistrates from different judicial  
14 election districts, the vote in favor of the substitution  
15 requires a majority of the district judges in each judicial  
16 election district affected.

17     9. An order of substitution shall not take effect unless,  
18 a copy of the order is received by the chairperson of the  
19 applicable county magistrate appointing commission no later  
20 than May 31 of the year in which the substitution is to take  
21 effect.

22     10. For a county in which a substitution order is in  
23 effect, the number of magistrates actually appointed pursuant  
24 to section 602.6403 shall be reduced by two for each full-time  
25 magistrate substituted under this section. However, if the  
26 substitution order is for a full-time magistrate appointed to  
27 serve more than one county, the reduction of the magistrate  
28 shall be as provided in the order of the chief judge of  
29 the judicial district. Upon a subsequent reduction in the  
30 apportionment of a magistrate to a county, the magistrate  
31 appointing commission shall further reduce the number of  
32 magistrates appointed.

33     11. *a.* Except as provided in subsections 1 through 10,  
34 a substitution shall not increase or decrease the number of  
35 magistrates authorized by this article.

b. A substitution shall not be made where the apportionment of magistrates to a county is insufficient to permit the reduction of magistrates as required by subsection 10.

12. If an apportionment by the state court administrator pursuant to section 602.6401 reduces the number of magistrates in a county to less than the number required to be apportioned for a substitution order to remain in effect, or if a majority of the district judges in each affected judicial election district determines that a substitution is no longer desirable, the substituted office shall be terminated. However, a reversion pursuant to this subsection, irrespective of cause, shall not take effect until the substitute full-time magistrate fails to be retained in office at a judicial election or otherwise leaves office, whether voluntarily or involuntarily, and the office becomes vacant. Upon reversion of the office, appointments shall be made pursuant to section 602.6403 as necessary to reestablish terms of office pursuant to section 602.6403, subsection 4.

### EXPLANATION

20 This bill relates to the apportionment of magistrates, and  
21 creates a full-time magistrate office.

22       The amendments to Code sections 46.16, 46.20, 46.21, and  
23 46.24, relate to the retention of a full-time magistrate  
24 position created by the bill in new Code section 602.6406.

25 The amendment to Code section 602.6105 specifies that  
26 the chief judge of a judicial district has the authority to  
27 designate the time and location a magistrate may hold court to  
28 ensure the availability of a magistrate in each county on a  
29 regular basis.

30 The bill strikes Code section 602.6401(3) requiring at least  
31 one resident magistrate in each county. Current law permits  
32 a magistrate to be a resident of a county contiguous to the  
33 county of appointment.

34 The amendment to Code section 602.6105(3) specifies that the  
35 chief judge shall designate the availability of a magistrate in



1 each county on a regular basis.

2 The bill creates new Code section 602.6406 providing for the  
3 establishment of full-time magistrate positions. Under the  
4 bill, the chief judge, upon approval of the supreme court, may  
5 designate by order of substitution that a full-time magistrate  
6 be appointed in lieu of three part-time magistrates.

7 The bill requires a full-time magistrate to stand for  
8 retention every six years after serving an initial term and  
9 requires a full-time magistrate to be a lawyer licensed to  
10 practice law in Iowa.

11 The bill creates special retention provisions for full-time  
12 magistrates pursuant to Code section 46.20. Under the bill,  
13 if a full-time magistrate is a resident of a county contiguous  
14 to the county of appointment and the counties are located  
15 in different judicial election districts, the full-time  
16 magistrate shall stand for retention in the judicial election  
17 district containing the county of appointment. If a full-time  
18 magistrate is appointed to serve in more than one county under  
19 the bill, and the counties are in different judicial election  
20 districts, the full-time magistrate shall simultaneously stand  
21 for retention in each judicial election district and the vote  
22 totals from each judicial election district shall be combined  
23 to determine if the full-time magistrate is retained.

24 Under the bill, if a full-time magistrate is appointed  
25 to serve in more than one county, the appointment shall be  
26 from persons nominated by the applicable county magistrate  
27 appointing commissions acting jointly.

28 The bill specifies a full-time magistrate shall have the  
29 same jurisdictional limits of a magistrate appointed pursuant  
30 to Code sections 602.6403 through 602.6405.

31 The bill also places other limits on the appointment of  
32 a full-time magistrate. The bill requires the county of  
33 appointment to have three or more magistrates apportioned to  
34 the county pursuant to Code section 602.6401, or in the case  
35 of an appointment of a full-time magistrate to serve in more

1 than one county, the counties, in the aggregate, shall be  
2 apportioned three or more magistrates.

3 The bill requires a majority of district judges in the  
4 judicial election district to vote in favor of substituting  
5 a full-time magistrate for three magistrates and find that  
6 the substitution will provide a more timely and efficient  
7 performance of judicial business. In the case of a full-time  
8 magistrate to be substituted for three magistrates from  
9 different judicial election districts, the vote in favor of the  
10 substitution requires a majority of the district judges in each  
11 judicial election district affected.

12 In counties where a substitution order is in effect, the  
13 bill requires the number of magistrates actually appointed in  
14 the county to be reduced by two magistrates for each full-time  
15 magistrate appointed. If the substitution order calls for  
16 a full-time magistrate appointed to serve in more than one  
17 county, the reduction of the magistrate shall be provided in  
18 the substitution order of the chief judge of the judicial  
19 district.

20 Under the bill, if an apportionment by the state court  
21 administrator pursuant to Code section 602.6401 reduces the  
22 number of magistrates in a county to less than the number  
23 required to permit a substitution order to remain in effect, or  
24 if a majority of the district judges in each affected judicial  
25 election district determines that a substitution is no longer  
26 desirable, then the substituted office shall be terminated.  
27 The bill prohibits a reversion of a full-time magistrate office  
28 back to three magistrate offices until the substitute full-time  
29 magistrate fails to be retained in office at a judicial  
30 election or otherwise leaves office, whether voluntarily or  
31 involuntarily, and the office becomes vacant. Upon reversion  
32 of the office, the bill requires the appointments of the three  
33 magistrates to be made pursuant to Code section 602.6403 as  
34 necessary to reestablish terms of office pursuant to Code  
35 section 602.6403(4).